IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU

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WRIT PETITION NO : 18948 of 2004

Between:

1. M.M. Anand Sagar

..... PETITIONER

AND

1. The District Collector, East Godavari District,

Kakinada and another.

.....RESPONDENTS

Counsel for the Petitioner: MR. C.V. MOHAN REDDY

Counsel for Respondents: GOVERNMENT PLEADER FOR PANCHAYAT RAJ AND RURAL DEVELOPMENT

The Court made the following:

ORDER:

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This writ petition is filed questioning the proceedings of the second respondent-District Panchayat Officer, East Godavari District, Kakinada, in ROC.No.5009/2004-A11, dated 22-09-2004, prohibiting the petitioner from drawing the Gram Panchayat funds and directing the Mandal Parishad Development Officer, Katrenikona, to operate the accounts of Katrenikona Gram Panchayat.

2. The contention of the learned Counsel for the petitioner is that the petitioner is being subjected to harassment by respondents 1 and 2 at the instance

of the M.L.A, who is inimically disposed towards the petitioner due to political rivalry, and that even in the order impugned several proceedings initiated earlier by the respondents against the petitioner were referred to and their being set aside by this Court, and in an earlier occasion, the Minister who heard the revision preferred against the order of suspension passed against the petitioner, had, while dismissing the petition, directed, at the instance of the M.L.A., removal of the petitioner, and that that itself would establish the attitude of the respondents towards the petitioner that they somehow want to keep him away from the office and prevent him from the exercising the powers which he is entitled to as per the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Act'). Relying on Rule 42 of the Rules relating to "certain Taxes & Other Lodging of Moneys recieved by the Gram Panchayat and Payment of Money from the Gram Panchayat Fund" (for short, 'the Rules') passed in G.O.Ms.No.30, PR, RD & R., dated 20-01-1995, learned Counsel for the petitioner contends that the order impugned is unsustainable because the District Panchayat Officer did not afford an opportunity of being heard to the petitioner before passing the order impugned and since the order impugned is not an interim order, contemplated by the second proviso to Rule 42(1) of the Rules, but is a final order, and hence is liable to be set aside.

3. The contention of the learned Government Pleader for Panchayat Raj and Rural Development, appearing on behalf of respondents 1 and 2, is that since Rule 42(2) of the Rules provides an appeal to the District Collector against the order impugned and since the petitioner did not avail the remedy of appeal, this writ petition is not maintainable. It is his contention that subsequent to the passing of the order impugned the District Panchayat Officer had passed another order instructing the Divisional Panchayat Officer, Amalapuram, to countersign the bills signed by the petitioner and contends that he has to pass the said order, in view of the inquiry pending against the petitioner in connection with his misappropriating huge funds of the Gram Panchayat and with a view to safeguard funds of the Gram Panchayat, and so petitioner is not entitled to any relief.

4. In reply, the contention of the learned Counsel for the petitioner is that since the District Panchayat Officer and Divisional Panchayat Officer have been harassing the petitioner, this Court, in an earlier writ petition, directed the District Panchayat Officer, Krishna District, but not the second respondent to conduct an enquiry against the petitioner in connection with the alleged misappropriation of the

funds of the Gram Panchayat, which is still pending, and so the subsequent order passed by the District Panchayat Officer is a design to belittle the status of the petitioner in the eyes of the villagers.

5. In re the contention regarding the maintainability of the petition without exhausting the remedy of appeal, since the events narrated in the petition and in the counter affidavit filed on behalf of the second respondent show that the authorities concerned are not acting with an open mind and have been putting the petitioner to inconvenience and harassment, no useful purpose would be served in his preferring an appeal against the order impugned. Therefore the fact of the petitioner not preferring an appeal is not and cannot be a ground to dismiss this petition and so I hold that his petition is maintainable.

6. Since Rule 42(1) of the Rules contemplates a show cause notice being issued before passing an order like the one impugned in this petition, and since no show cause notice is issued to the petitioner, the order impugned passed without following the procedure prescribed in Rule 42(1) of the Rules is liable to be and hence is set aside. When the impugned order is not sustainable the subsequent order passed by the second respondent instructing the Divisional Panchayat Officer to countersign the bills signed by the petitioner also is not sustainable, as it is in accordance with the provisions of the Act or the Rules. It is made clear that this order does not prevent the respondents passing appropriate orders as per the Rules.

7. Hence the Rule Nisi is made absolute and the proceedings impugned are quashed. Petitioner is entitled to the costs of the petition.

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C.Y. SOMAYAJULU, J

28th July, 2005.

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That Rule Nisi has been made absolute as above.

Witness the Honourable Sri Bilal Nazki, the Acting Chief Justice on Thursday this the Twenty eighth day of July, Two thousand and Five.